

1 DAVID N. MAKOUS, SB# 082409
E-Mail: makous@lbbslaw.com
2 DANIEL C. DECARLO, SB# 160307
E-Mail: decarlo@lbbslaw.com
3 MINA I. HAMILTON, SB# 213917
E-Mail: hamilton@lbbslaw.com
4 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
221 North Figueroa Street, Suite 1200
5 Los Angeles, California 90012
Telephone: 213.250.1800
6 Facsimile: 213.250.7900

7 *Attorneys for Plaintiffs*
TRAFFICSCHOOL.COM, INC. and
8 DRIVERS ED DIRECT, LLC
9

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 TRAFFICSCHOOL.COM, INC., a
13 California corporation; DRIVERS ED
14 DIRECT, LLC, a California limited
liability company,

15 Plaintiffs,

16 v.

17 EDRIVER, INC., ONLINE GURU,
18 INC., FIND MY SPECIALIST, INC.,
and SERIOUSNET, INC., California
19 corporations; RAVI K. LAHOTI, RAJ
LAHOTI, individuals,

20 Defendants.
21

CASE NO. CV 06-7561 PA (CWx)

The Honorable Percy Anderson

DECLARATION OF JOSEPHINE A.
BROSAS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES AND COSTS

Hearing:

Date: December 5, 2011

Time: 1:30 p.m.

Courtroom No. 15

*[Filed concurrently with Notice of
Motion; Memorandum of Points and
Authorities; Joint Statement on
Attorney's Fees; Joint Statement on
Costs; Defendants' Comments to Joint
Statement; Declaration of Mina I.
Hamilton in support of Motion;
Declaration of Andrew Serwin; and
[Proposed] Order]*

DECLARATION OF JOSEPHINE A. BROSAS

I, Josephine A. Brosas, being duly sworn, state as follows:

1. I am over 18 years of age, have personal knowledge of the matters asserted in this declaration, can attest to their accuracy, and am competent to testify as follows:

2. I am an attorney at law admitted to practice before this Court. My firm Lewis Brisbois Bisgaard & Smith LLP ("LBBS") represents Plaintiffs TrafficSchool.com, Inc. and Drivers Ed Direct, LLC in this action.

3. This declaration is based upon my personal knowledge of the timekeeping and billing practices in this case and is also based upon my knowledge of the motions and briefs filed in this case.

Parties' Meet and Confer pursuant to the Court's August 24, 2011 Order (D.E. # 302)("Order")

4. On September 12, 2011, counsel for the parties met and conferred telephonically on the issue of Plaintiffs' attorneys' fees and costs. Mina Hamilton and I attended the telephonic conference on behalf of Plaintiffs and Mr. Serwin and his associate Ms. Tammy Boggs attended on behalf of Defendants. I recall Mr. Serwin stating that Plaintiffs are not entitled to fees because they are not the prevailing party in an exceptional case and that there has been no allocation (vaguely, in general terms, and not as outlined on p. 3 of Defendants' "Comments" to the Joint Statement).

5. With respect to information relating to fee arrangements with Plaintiffs in this case and in other similar litigation handled by my firm, Ms. Hamilton informed Mr. Serwin that, as to the former, we do not believe we have one but will inquire and follow up, and as to the latter, Mr. Serwin volunteered that a list of the types of cases (e.g., patent infringement, trademark infringement, false advertising) and the rates charged in those cases, will suffice. Mr. Serwin also stated that other details, such as client names and case information, are privileged, and that he does not expect to be provided with such information. Mr. Serwin never mentioned anything about wanting to know which

1 attorneys worked on which cases, or any information other than a list of the case type
 2 and corresponding rates. Mr. Serwin never asked to be provided with any “business
 3 records showing hourly rates charged in other types of litigation” as he claims on p. 3
 4 of Defendants’ “Comments” to the Joint Statement.

5 Submissions Pursuant to the Court’s Order

6 6. Attached as Exhibit E to the Declaration of Mina I. Hamilton are true and
 7 correct copies of the invoices containing detailed attorney time records from November
 8 2006 through February 2009. I reviewed and redacted these invoices to protect
 9 attorney-client privileged and work product information.

10 7. I have reviewed the invoices generated in this matter and have accurately
 11 summarized relevant entries into an Excel spreadsheet format containing the hours
 12 which Plaintiffs are claiming in this Motion. I reviewed and redacted certain entries in
 13 this spreadsheet to protect attorney-client privileged and work product information.
 14 Pursuant to the Court’s August 24, 2011 Order, attached to the Motion is a true and
 15 correct copy of that Excel spreadsheet with Defendants’ portions (“Joint Statement on
 16 Attorneys’ Fees”). Included in that Joint Statement are tables for work performed in
 17 connection with the instant Motion and with the Joint Status Report previously filed
 18 with this Court (D.E. #306). It is estimated that Plaintiffs’ counsel will spend
 19 approximately 210 hours in connection with the instant Motion (including a reasonable
 20 and good faith estimate for the reply and any hearing). It is also estimated based on my
 21 review of the pre-bill time entries that Plaintiffs’ attorneys have spent approximately
 22 115 hours in connection with the Joint Status Report (D.E. #306), not including
 23 additional time which will be spent on remand. Plaintiffs expressly reserve the right to
 24 submit at a later time further papers, declaration(s) and supplemental evidence
 25 including invoices detailing the additional fees and costs that Plaintiffs are claiming for
 26 work on remand.

27 8. I have also reviewed the various invoices for costs and expenses generated
 28 in this matter which support the costs and expenses being sought by Plaintiffs in this

1 Motion. Attached to the Declaration of Mina I. Hamilton as Exhibit F are true and
2 correct copies of those invoices.

3 9. I reviewed those invoices and accurately summarized relevant entries into
4 an Excel spreadsheet format containing the cost items which Plaintiffs are claiming.
5 Pursuant to the Court's August 24, 2011 Order, attached to the Motion is a true and
6 correct copy of that Excel spreadsheet with Defendants' portions ("Joint Statement on
7 Costs").

8 Summary of Hours and Fees Claimed

9 10. Based on my review of the invoices, I separated the approximately 2,679.7
10 hours of attorney time spent in proceedings before the district court into the following
11 general categories: (1) pleadings and amendments thereto, including successfully
12 opposing Defendants' motions to dismiss (about 241.20 hours); (2) fact and expert
13 discovery, including written discovery, depositions, preparation of expert initial and
14 rebuttal reports, surveys, and motions to compel (about 773.30 hours); (3) cross-
15 motions for summary judgment; (4) pre-trial submissions, including witness lists,
16 exhibit lists, jury instructions, memorandum of contentions of fact and law, motions in
17 limine, and additional specific filings dictated by this Court's order (trial declarations,
18 deposition designation, stipulation regarding trial exhibits (about 463.10 hours); (5)
19 bench trial and Court-ordered post-trial filings, such as post-trial briefs and findings of
20 fact and conclusions of law, and Defendants' motion to stay the injunction (about
21 590.90 hours); (6) and Plaintiffs' contempt motion (about 143.70 hours). In addition, at
22 least 115 hours have been incurred in connection with the Joint Status Report (D.E. #
23 306) (not including additional fees to be incurred on remand) and there are at least 210
24 hours that Plaintiffs anticipate have been and will be incurred in connection with this
25 instant Motion, which is allowed as part of the claimed fees.

26 11. The total attorney's fees charged applying the actual rates is \$809,850.
27 The fees being sought herein is \$2,867,616. This amount reflects the lodestar figure of
28 \$1,433,808, adjusted upward with a 2.0 multiplier. The \$1,433,808 lodestar figure was

1 calculated by multiplying the number of hours reasonably expended on proceedings
2 before the district court prior to or excluding the appellate proceedings (i.e., 2,679.7),
3 including this Motion (i.e., 210 [incorporating time estimated for the Reply and any
4 hearing]) and the preparation of the Joint Status Report (D.E. #306) (i.e., 115) by the
5 reasonable hourly rates (i.e., \$503 for partners and \$349 for associates).

6 12. I prepared Tables 2 through 4 attached to the Motion based on my review
7 of the billing records and invoices, Excel spreadsheets, and the AIPLA and NLJ reports
8 true and correct copies of which are attached as Exhibits G and H, respectively, to the
9 Hamilton declaration.

10
11 I declare under the penalty of perjury that the foregoing is true and correct.
12 Executed at Los Angeles, California, on the 3rd day of November, 2011.

13
14 /s/Josephine Brosas
15 Josephine A. Brosas
16
17
18
19
20
21
22
23
24
25
26
27
28